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Equal Protection: People v. Childress

EQUAL PROTECTION

N.Y. Const. art. I, § 11:

No person shall be denied the equal protection of the laws of this state or any subdivision thereof.

U.S. Const. amend XIV, § 1:

No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.

COURT OF APPEALS

People v. Childress[754]
(decided February 23, 1993)

A criminal defendant claimed his equal protection rights[755] were violated by the prosecution's use of race-based peremptory challenges.[756] The New York Court of Appeals held that the

754. 81 N.Y.2d 263, 614 N.E.2d 709, 598 N.Y.S.2d 146 (1993).

755. U.S. CONST. amend. XIV, § 1. The Equal Protection Clause provides in pertinent part: "No State shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws." *Id.*

756. *Childress*, 81 N.Y.2d at 265, 614 N.E.2d at 710, 598 N.Y.S.2d at 147. Although not expressly claimed by the defendant or stated by the court, the Equal Protection Clause of the New York State Constitution has also been held to have been violated upon a showing of a discriminatory use of peremptory challenges during jury selection. *See* People v. Bolling, 79 N.Y.2d 317, 320, 591 N.E.2d 1136, 1139, 582 N.Y.S.2d 950, 953 (1992) ("[T]he discriminatory use of peremptory challenges . . . violates the Equal Protection Clause of the State Constitution . . . ."); People v. Kern, 75 N.Y.2d 638, 649, 554 N.E.2d 1235, 1240, 555 N.Y.S.2d 647, 652 (1990) (holding that while the Equal Protection Clause of the Federal Constitution restricts the use of peremptory challenges so as to purposefully exclude persons of a particular race from a jury, to the extent that the state equal protection clause "is coextensive with the Federal provision," the state constitutional provision prohibits such discrimination as well). The New York State Equal Protection Clause provides: "No person shall be denied the equal protection of the laws of this state or any subdivision thereof." N.Y. CONST. art. I, § 11.

defendant's equal protection rights were not violated because the defendant failed to establish a prima facie showing of unlawful discrimination with regard to the prosecution's exercise of its peremptory challenges.[757]

During jury selection preceding the burglary trial of an African-American defendant, defense counsel raised an objection to the prosecutor's use of his peremptory challenges,[758] claiming that they were purposefully being exercised in order to exclude African-Americans from the jury.[759] The prosecution stated, on the record, that despite the fact that peremptory challenges had been exercised against two out of the three prospective African-American jurors, neither challenge was motivated by race.[760] The trial judge, although taking note of defense counsel's exception, refused to exclude the peremptory challenges.[761] The defendant was subsequently convicted.[762] The appellate division, in affirming the conviction, held that the defendant "failed to substantiate his claim . . . since the voir dire proceedings ha[d] not been made available as part of the record on appeal."[763]

At issue before the New York Court of Appeals was whether the defendant satisfied the minimum showing required to establish a prima facie case of unlawful discrimination in the exercise of peremptory challenges,[764] as articulated in *Batson v.*

757. *Childress*, 81 N.Y.2d at 268, 614 N.E.2d at 712, 598 N.Y.S.2d at 149.

758. The permissible number of peremptory challenges, or challenges made without reason or cause, is governed in state criminal proceedings by N.Y. CRIM. PROC. LAW § 270.25 (McKinney 1993 & Supp. 1994).

759. *Childress*, 81 N.Y.2d at 265, 614 N.E.2d at 710, 598 N.Y.S.2d at 147.

760. *Id.*

761. *Id.*

762. *Id.*

763. People v. Childress, 177 A.D.2d 498, 499, 575 N.Y.S.2d 1018, 1019 (2d Dep't 1991) In addition to the equal protection claim, the court held that the state satisfied its burden of proving that the defendant was competent to stand trial. *Id.* Furthermore, the trial court did not err in its denial of defense request for a jury charge on the lesser included offense of criminal trespass in the second degree. *Id.*

764. *Childress*, 81 N.Y.2d at 264, 614 N.E.2d at 710, 598 N.Y.S.2d at 147.

Kentucky.[765] In *Batson*, the Supreme Court reaffirmed the principle that an individual is denied his equal protection rights when the state places that person on trial with a jury from which members of his or her race have been purposefully excluded.[766] However, the Supreme Court noted that the Equal Protection Clause does not give a defendant a right to have a jury, which is composed in whole or in part, of persons of his own race.[767]

The *Batson* Court articulated the standard for assessing a prima facie case of racially motivated discrimination in the selection of a petit jury.[768] The defendant must first demonstrate that he is a "member of a cognizable racial group" and that the prosecution used its peremptory challenges to remove one or more members of that racial group from the venire.[769] The defendant must then raise an inference, using these facts and other relevant circumstances, that the prosecutor used his peremptory challenges to exclude prospective jurors based on the fact that they are members of the defendant's racial group.[770]

The *Batson* Court stated that in determining whether the defendant has made a prima facie showing, the trial judge can consider such things as "a 'pattern' of strikes against black jurors included in the particular venire" or even "the prosecutor's

765. 476 U.S. 79 (1986).

766. *Id.* at 85 (citing Strauder v. West Virginia, 100 U.S. 303 (1880)). The *Batson* court stated that *Strauder* "laid the foundation for the Court's unceasing efforts to eradicate racial discrimination in the procedures used to select the venire from which individual jurors are drawn." *Id.*

767. *Id.* at 85 (citing *Strauder*, 100 U.S. at 305).

768. *Batson*, 476 U.S. at 93.

769. *Id.* at 96.

770. *Id.* Subsequently, the Supreme Court has broadened its interpretation of this particular equal protection guarantee in ruling that a *Batson* challenge is not limited to situations where the defendant and the challenged venire member are of the same racial group. *See also* Powers v. Ohio, 499 U.S. 400 (1991). In *Powers*, the Court held that "the Equal Protection Clause prohibits a prosecutor from using the State's peremptory challenges to exclude otherwise qualified and unbiased persons from the petit jury solely by reason of their race." *Id.* at 409. In acknowledging *Batson*, the Court found that a white defendant may rightfully challenge the prosecution's peremptory challenges of African-American jurors. *Id.* at 404. Citing *Batson*, the Court said that "[a] person's race simply 'is unrelated to his fitness as a juror.'" *Id.* at 410.

questions and statements during *voir dire* examination."[771] Upon a successful showing by the defendant, the burden shifts to the prosecutor to present race-neutral explanations for challenging the prospective jurors in that particular racial group.[772]

In *Childress*,[773] the New York Court of Appeals applied the *Batson* formulation. Finding that the defendant satisfactorily demonstrated that members of a particular cognizable racial group, African-Americans, had been excluded by the prosecution's peremptory challenges, the court dispatched this first element of the prima facie showing and focused on the more problematic second element.[774] With respect to this element, the court explained that "[t]here are no fixed rules for determining what evidence will give rise to an inference sufficient to establish a prima facie case."[775] The defendant in *Childress*, in an attempt to provide support for the inference, relied on the mere fact that the prosecutor admittedly used his challenges to exclude two of the three African-American jurors.[776] Additionally, the defendant

771. *Batson*, 476 U.S. at 97.

772. *Id.* However, realizing that this shifted burden places a limitation on the "peremptory character of the historic challenge[,]" the Court emphasized that "the prosecutor's explanation need not rise to the level justifying exercise of a challenge for cause." *Id.*

773. 81 N.Y.2d at 266, 614 N.E.2d at 711, 598 N.Y.S.2d at 148.

774. *Id.*

775. *Id.* (citation omitted). The court elaborated on this proposition:

> A pattern of strikes or questions and statements made during the voir dire may be sufficient in a particular case . . . . Additionally, this element may be established by a showing that members of the cognizable group were excluded while others with the same relevant characteristics were not . . . . Another legally significant circumstance may exist where the prosecution has stricken members of this group who, because of their background and experience, might otherwise be expected to be favorably disposed to the prosecution . . . . The court should also take into consideration the fact that the mere existence of a system of peremptory challenges may serve as a vehicle for discrimination by those with racially motivated inclinations . . . . Conversely, "[t]he mere inclusion of some members of defendant's ethnic group will not defeat an otherwise meritorious [*Batson*] motion . . . ."

Id. at 266-67, 614 N.E.2d at 711, 598 N.Y.S.2d at 148 (citations omitted).

776. *Id.* at 267-68, 614 N.E.2d at 711-12, 598 N.Y.S.2d at 148-49.

relied on the fact that the questioning of the prospective jurors was proper, therefore, indicating no rationale as to why they could not serve fairly on the jury.[777] While the court found that the former argument was insufficient to establish a "pattern of purposeful exclusion sufficient to raise an inference of discrimination,"[778] the latter contention, as the court stated, "served only to highlight that the stricken jurors demonstrated no biases that would disqualify them for service or support a challenge for cause."[779] Under the circumstances of the record before it, the court held that the defendant failed to establish a sound factual basis sufficient to raise the inference that the prosecutor exercised his peremptory challenges to exclude prospective jurors based on race.[780] Additionally, the court held

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777. *Id.*

778. *Id.* at 267, 614 N.E.2d at 711, 598 N.Y.S.2d at 148. *See* People v. Steele, 79 N.Y.2d 317, 325, 591 N.E.2d 1136, 1142, 582 N.Y.S.2d 950, 956 (1992) (finding that the prosecution's exercise of "three of her four challenges against African-Americans . . . alone is not sufficient to establish a pattern of exclusion of African-Americans").

779. *Childress*, 81 N.Y.2d at 268, 614 N.E.2d at 712, 598 N.Y.S.2d at 149.

780. *Id.*; *but see* People v. Bolling, 79 N.Y.2d 317, 325, 591 N.E.2d 1136, 1141, 582 N.Y.S.2d 950, 955 (1992) (finding that the disproportionate number of peremptory challenges to African-American prospective jurors in conjunction with uncontroverted evidence that two of the challenged jurors had pro prosecution backgrounds, provided a sufficient basis for raising the inference that the prosecution was using its peremptory challenges for discriminatory purposes); People v. Jenkins, 75 N.Y.2d 550, 556, 554 N.E.2d 47, 50, 555 N.Y.S.2d 10, 13 (1990) (holding that a disproportionate number of peremptory strikes against African-American prospective jurors who were described as "'a heterogeneous group of both sexes with different occupations and social backgrounds' . . . and [who] did not otherwise appear to be unsuited for jury service on this case," provided support for shifting the burden of coming forth with race-neutral explanations for the suspect peremptory challenges to the prosecution); People v. Scott, 70 N.Y.2d 420, 425, 516 N.E.2d 1208, 1211, 522 N.Y.S.2d 94, 97 (1987) (holding that the defendant established a prima facie claim that the prosecution exercised its peremptory challenges in order to exclude African-Americans, described as "a heterogeneous group which included different sexes, different occupations and different social backgrounds," based on the fact that "[n]one of the [prospective] jurors exhibited signs of bias favoring defendant[, t]o the

that it is not necessary to furnish the minutes of the voir dire in order to obtain relief on appeal under *Batson*.[781]

In conclusion, by failing to meet the second prong of the *Batson* test, the defendant did not establish a prima facie showing of racial discrimination in the prosecution's use of peremptory challenges. Therefore, defendant's equal protection rights under both the New York State and Federal Constitutions had not been violated.

People v. Walker[782]
(decided October 12, 1993)

Defendant claimed that his right to equal protection pursuant to the State[783] and Federal[784] Constitutions was violated because

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contrary, their backgrounds and knowledge of the case suggested that any bias they might have would favor the prosecution").

781. *Childress*, 81 N.Y.2d at 268, 614 N.E.2d at 712, 598 N.Y.S.2d at 149. As the court explained:

> [I]n order to give the trial court a proper foundation to evaluate the claim — as well as to ensure an adequate record for appellate review — a party asserting a claim under *Batson v. Kentucky* . . . should articulate and develop all of the grounds supporting the claim, both factual and legal, during the colloquy in which the objection is raised and discussed . . . . Despite the absence of voir dire minutes, a trial or appellate court may determine, based on facts elicited during the *Batson* colloquy, whether a prima facie case of discriminatory use of peremptory challenges has been established . . . .

Id. (citations omitted).

782. 81 N.Y.2d 661, 623 N.E.2d 1, 603 N.Y.S.2d 280 (1993).

783. N.Y. CONST. art. I, § 11. Section 11 states:

> No person shall be denied the equal protection of the laws of this state or any subdivision thereof. No person shall, because of race, color, creed or religion, be subjected to any discrimination in his civil rights by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state.

Id.

784. U.S. CONST. amend. XIV, § 1. Section 1 states in relevant part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.